Filed 7/27/10 P. v. Saddler CA4/2

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

| | |
|---|---|
| THE PEOPLE,<br>Plaintiff and Respondent,<br>v.<br>JONATHAN JERMAIN SADDLER,<br>Defendant and Appellant. | E048676<br>(Super.Ct.No. FBA800545)<br>OPINION |

APPEAL from the Superior Court of San Bernardino County. John P. Vander Feer, Judge. Affirmed.

Allison K. Simkin, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, and Jeffrey J. Koch, Deputy Attorney General, for Plaintiff and Respondent.

Defendant and appellant Jonathan Jermain Saddler pled no contest to robbery. (Pen. Code, § 211.) He contends there was not a factual basis for his plea and that the

trial court intended $100 for reimbursement of appointed attorney fees and not $150 as stated in the minute order. We affirm.

## FACTUAL BASIS

Defendant was originally charged with assault and battery. When defendant entered his no contest plea to a new robbery count, the parties stipulated that "if the court were to read and consider the police reports [in] this matter, includ[ing] additional discovery, the court would find a factual basis for the plea." The police report augmented into our record did not state anything had been taken from the victim, or otherwise indicate that defendant had robbed victim after beating him. Defendant thus contends there was not a factual basis for his plea. The People contend that the police report first provided by the trial court omitted the "additional discovery" of subsequent supplemental police reports. We forwarded the additional police reports provided by the People to the trial court and directed the trial court to settle the record. The trial court found that the package of additional police reports was "the additional discovery . . . that the parties stipulated . . . would provide a factual basis." The supplemental police reports show that the victim reported his assailant or assailants taking his watch. Accordingly, there was a factual basis for defendant's plea.

## FEES FOR APPOINTED COUNSEL

During sentencing, the trial court stated: "Find the ability to pay appointed counsel fees in the amount of $150. If you can't afford to pay that, [trial counsel] will give you a piece of paper that explains what you need to do if you can't afford to pay that." The sentencing minute order states: "The Court orders attorney [fees] in the

amount of $150.00, payable through Central Collections." Prior to pronouncement, defendant's trial counsel stated, "I'm giving [defendant] a copy of the waive—to have his attorney's fees waived. I'd ask that—I think all of your fines and fees listed are statutory."

Pursuant to defendant's plea agreement, he was also sentenced on a misdemeanor in a different case (case No. TBA 800376). During pronouncement of the sentence for that case, the trial court stated, "You also—I'm just gonna impose $100 attorney's fees. I'm just gonna impose the attorney's fees on the felony, not on the misdemeanor. I'm gonna put imposed on felony so he has—since he has that restitution to pay. I'm not imposing attorney's fees on the misdemeanor."

Defendant contends that the trial court's statement while pronouncing the sentence on the misdemeanor shows that "the trial court unequivocally changed its mind regarding the amount of attorneys fees imposed in this case, from $150 to $100, after considering the totality of the fees . . . owed in both cases," and thus the minute order is erroneous. The People contend that the trial court simply misstated the amount previously imposed and did not reduce the amount imposed. We can posit yet a third interpretation; the trial court was thinking aloud, contemplated reduced attorney fees of $100 for the misdemeanor, and then settled on imposing no attorney fees for the misdemeanor.

"On appeal, we presume that a judgment or order of the trial court is correct, ' "[a]ll intendments and presumptions are indulged to support it on matters as to which

the record is silent, and error must be affirmatively shown." ' [Citation.]" (*People v. Giordano* (2007) 42 Cal.4th 644, 666.)

All three interpretations are plausible; however, we have no reason for selecting defendant's interpretation over the other two. Thus, defendant has failed to affirmatively show error in the sentencing minute order and we presume the minute order is correct. Accordingly, we find no error.

**DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ
P. J.

We concur:

McKINSTER
J.

KING
J.